

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 2:15-00099

TIMOTHY A. JOHNSON

MEMORANDUM OPINION AND ORDER

Pending before the Court is defendant's pro se motion to review his sentence based upon the First Step Act of 2018. (ECF No. 56). Pursuant to Standing Order, the Office of the Federal Public Defender provided a response regarding defendant's eligibility for relief under the First Step Act and concluded that defendant was not eligible. See ECF No. 60.

On December 21, 2018, the First Step Act was signed into law. See Pub. L. No. 115-391, 132 Stat. 5194 (2018). The First Step Act applies the relief provided in the Fair Sentencing Act of 2010, which reduced the disparity in the treatment of crack and powder cocaine offenses, retroactively to eligible defendants. Under the First Step Act, "a court that imposed a sentence for a covered offense" may "impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 were in effect at the time the covered offense was committed." Id. at § 404(b).

To be eligible for a reduced sentence under the First Step Act, a defendant's sentence must not have been previously imposed

or reduced in accordance with Sections 2 and 3 of the Fair Sentencing Act. Id. at § 404(c). In addition, a sentence may not be reduced if the defendant has made a previous motion for a reduction under the First Step Act that was denied on the merits. Id. Furthermore, a court is not required to reduce a sentence under the First Step Act. Id.

Defendant is not eligible for relief as he was sentenced in 2016, after the Fair Sentencing Act went into effect. Nor was he convicted of an offense amended by the Fair Sentencing Act as his offense of conviction involved heroin, not crack cocaine. See ECF No. 60. Therefore, defendant's motion is **DENIED** insofar as he seeks a reduced sentence.

The Clerk is **DIRECTED** to send a copy of this Memorandum Opinion and Order to defendant and counsel of record.

It is SO ORDERED this 5th day of August, 2022.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Senior United States District Judge